

REMARKS/ARGUMENTS:

This Response responds to the Office Communication dated June 2, 2004. There appear to be two election requirements made in the Office Communication. First, the Examiner has required an election of species between a first Species A for a lens system having a single lens (FIG. 13) and a first Species B for a lens system having multiple lenses (FIGS. 5 and 8). Second, the Examiner has required a second election of species between a second Species A for a ring-shaped lens (FIGS. 8 and 13) and a second Species B for a non-ring-shaped lens (FIG. 5).

In response to the restriction requirements, an election of the first Species B (multiple lenses) and the second Species A (ring-shaped) is made with traverse. The claims corresponding to elected first Species B and second Species A are claims 23 – 67, which are disclosed in FIGS. 8 and 11 – 15. Furthermore, claim 23 is generic with regard to the second Species A and B, as the lenses may be either ring-shaped or non-ring-shaped. The election requirements are traversed for the reasons set forth below. Reconsideration of the election of species requirements is requested.

The Examiner first divides the invention to a first Species A for a lens system having a single lens as shown in FIG. 13 and to Species B for a lens system having multiple lenses as shown in FIGS. 5 and 8. As noted above, Applicant elects the first Species B with traverse. Applicant submits that there are no claims directed to a lens system having only a single lens. The Examiner contends that FIG. 13 shows only a single lens. However, as described in lines 9 - 10 on page 8 of the specification, multiple rings 16" are placed under the flap and positioned in concentric circles around the main optical axis of the eye. Therefore, such restriction between a first Species A of a lens system having a single lens and a first Species B for a lens system having multiple lenses is improper and unnecessary, and should be withdrawn.

The second election of species requirement is between a second Species A for a ring-shaped lens (FIGS. 8 and 13) and a second Species B for a non-ring-shaped lens (FIG. 5). The second Species A and Species B of the claimed invention are sufficiently related and should be examined together.

Applicant notes that “[i]f the search and examination of an entire application can be made *without* serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.” MPEP § 803 (emphasis added). Furthermore, MPEP § 803 also states that “Examiners must provide reasons and/or examples to support conclusions”. The Office Action provides no reasons, examples or support to justify the conclusion that the second Species A and the second Species B are patentably distinct species of the claimed invention. Moreover, both the second Species A and the second Species B relate to a lens embedding a heating element in a meltable member, so that there is no divergent subject matter.

Furthermore, independent claim 23 broadly recites a method for correcting vision that includes placing lenses between first and second internal corneal surfaces, which is readable on both the second Species A for a ring-shaped lens and the second Species B for a non-ring-shaped lens. Since claim 23 is generic with regard to the second Species A and the second Species B, the restriction requirement is improper.

Additionally, Applicant is entitled to a reasonable number of species and should not be restricted to a single disclosed species. MPEP § 806.04(a). The number of subspecies recited in the claims does not require a burdensome search to properly examine the claims together. As noted above, examination of claim 1 that broadly recites placing lenses between first and second internal corneal surfaces would not create a serious burden on the Examiner for examination of the second Species A and the second Species B together.

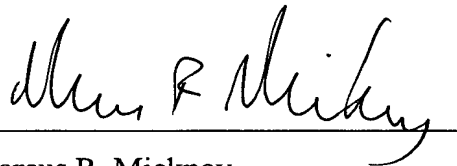
Therefore, Applicant submits that the improper election requirement between the second Species A and the second Species B be withdrawn.

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Reply to Office Communication of June 2, 2004

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In view of the foregoing comments, Applicant respectfully requests reconsideration of the election requirement and examination of all claims on the merits. Prompt and favorable action is solicited.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Marcus R. Mickney", written over a horizontal line.

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